

## REMARKS

Claims 2-4, 11 and 16-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Kapoor (U.S. Patent No. 5,751,969). Claims 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mao et al. (U.S. Patent No. 6,459,427) in view of Kapoor. Claims 5-9 and 19-23 were indicated as allowable.

Independent claims 11 and 16 call for providing an on-going count of bits transmitted and time elapsed from the point in time when a first marker is transmitted. Neither Kenner nor Kapoor teach this limitation alone or in combination.

The Examiner expressly concedes that Kenner does not disclose providing an on-going count of bits transmitted from the point in time when a first marker is transmitted. See Paper No. 9, page 3. However, the Office Action impliedly concedes that Kenner does not disclose providing an on-going count of time elapsed from the point in time when a first marker is transmitted. For example, the Office Action states that Kenner teaches a test packet to calculate a round-trip elapsed time. Paper No. 9, page 3 (emphasis added); Kenner, column 27, lines 58-59. That is, Kenner's testing process includes a combination of factors; one being the round-trip elapsed time for a test packet to and from a remote SRU. Column 27, lines 54-61. Kenner does not explain how he calculates the round-trip elapsed time. Further, there is no mention of a counter in the passages cited by the Examiner. Thus, Kenner does not teach sufficiently clearly the existence of providing an on-going count of time elapsed.

In contrast, claims 11 and 16 require providing an on-going count of two things, bits transmitted and time elapsed, both from the point in time when a first marker is transmitted. In this way, details of the transmission may be obtained at any time (as compared to the completion of a round-trip) and are current as of the time the request was made.

Similarly, Kapoor does not teach an on-going count of bits transmitted and time elapsed from the point in time when a first marker is transmitted. Kapoor is not cited as teaching an on-going count of time elapsed. Paper No. 9, page 3. Kapoor is however, cited as disclosing providing an on-going count of bits. *Id.* For example, the Office Action states that Kapoor discloses counting a market set in a data packet. *Id.* (emphasis added). Specifically, when

congestion is imminent or is occurring, a congestion bit indicator may be set in a data packet. Column 4, lines 47-55. When a data packet including a congestion indicator bit that is set is received at a node, a congestion counter is incremented. Column 5, lines 44-53. Thus, Kapoor's congestion counter counts data packets and not bits. Further, Kapoor fails to teach data packets of a fixed length. Thus, counting packets is not tantamount to counting bits. Even if Kapoor is wrongly construed as counting bits he still fails to teach an on-going count. For example, the congestion indicator is incremented when the congestion indicator bit is encountered. Column 5, lines 44-52. Thereafter, no other bits in the data packet are specifically recognized. Thus, Kapoor does not teach or suggest providing an on-going count of bits transmitted from the point in time when a first marker is transmitted.

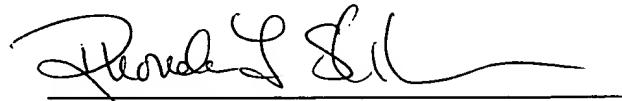
Neither Kenner nor Kapoor teach two counts (e.g., bits and time) that begin when a first marker is transmitted much less two on-going counts. Because neither Kenner nor Kapoor teach at least one limitation of claims 11 and 16, neither is obvious. As such, the claims depending therefrom are not obvious over Kenner in view of Kapoor.

Independent claim 12 calls for a counter that tracks a transmission from a point where a first marker is inserted. Again, Kapoor is relied on as teaching a counter for tracking a transmission from the point where a first marker was inserted. It is respectfully submitted that Kapoor's packet counter is not a bit counter. For example, as explained above, Kapoor's congestion counter is incremented when a data packet is received that has the congestion indicator bit set. Column 5, lines 44-53. Thus, Kapoor teaches an all or none count as opposed to the tracking of the transmission from the point where a first marker is inserted. Advantageously, the claimed tracking allows for receiving transmission details at any point from where the first marker was inserted in the transmission. Kapoor has no such capability.

For at least the reasons stated above, it is respectfully submitted that claims 2-4 and 10-18 are not obvious in view of any of the cited references. Accordingly, it is respectfully requested that the rejection be withdrawn and the application be passed to issue.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0083US).

Respectfully submitted,



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